IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2220 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

NATVAR PARIKH INDUSTRIES

Versus

RAJDEEP PLASTICS

Appearance:
MR DV PARIKH for Petitioner

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE M.C.PATEL

Date of decision: 11/11/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellant who is the original defendant No.2, challenges the judgement and order dated 29th December, 1997 made by the Fourth learned Civil Judge (Senior Division) at Jamnagar in Special Civil Suit No. 194 of 1991, partly decreeing the Suit of the plaintiff to the extent of Rs. 4,41,084/-, being the amount of Customs

duty and the amount of clearing charges of Rs. 25,000/with interest from the date of the filing of the Suit till realisation, at 6% per annum and costs of the Suit.

The respondent No.1 plaintiff had made a claim of Rs. 10,82,512/- from the defendant, on the ground that the goods which were consigned with the carrier did not reach the destination. The respondent No.1 had purchased acrylic plastic scrap from Frankfurt, West Germany and received the same in a container under the Invoice No. 7035. These goods were to be transported in a truck to Jamnagar from Kandla port and for that purpose, they were handed over to the appellant under Consignment Note No. 103/91-92 and the transport charges payable were Rs. 4500/-. This amount was to be paid at Jamnagar. The consignment was loaded in a truck bearing Registration No. GQB 5962, which was driven by the original defendant No.1 i.e. the present respondent No.2 Bajrang Pandurang. The goods however, did not reach the destination. Despite legal notice issued by the original plaintiff, the amount was not paid and therefore the Suit.

Admittedly, from the total claim the plaintiff having received certain amounts from the Insurance Company, confined the claim to the items of Customs duty and clearing charges and that is why the trial Court has passed the decree in connection with those items only.

The learned Counsel appearing for the appellant contended that there was a stipulation in the Consignment Note under which the Bombay Court alone had jurisdiction to entertain this Suit. According to him therefore, the trial Court at Jamnagar could not have assumed the jurisdiction in the matter. From the perusal of the record it is clear that no part of the cause of action arose in the State of Maharashtra. The goods were to be transported from Kandla to Jamnagar. The learned Counsel for the appellant tried to contend that the appellant was having its place of business at Bombay but could not make good this argument. On the contrary, the registered office of the appellant is shown to be in Ahmedabad and in the ground (a) and (b) of the memo of appeal, the only contention that is taken in context of the issue regarding jurisdiction is that the Suit should have been entertained and tried at a place where wrong took place and that it could be tried either at Bagodara where the theft took place or at Kandla. It never was the appellant's case that it should have been tried in Bombay on the ground that a Branch office of the appellant is at Bombay. The learned Counsel for the appellant was unable

to substantiate his initial submission that the principal place of business of the appellant firm was at Bombay. Since the evidence discloses that the payment was to be made at Jamnagar and the goods were to be delivered at Jamnagar, the Jamnagar Court, in our view had jurisdiction in the matter. The Bombay Court having no jurisdiction at all could not have been conferred the jurisdiction to try the suit by a stipulation contained in the Consignment Note.

It was next contended that in view of the stipulation contained in the Consignment Note, the appellant was not liable to make any payment. Reference was made to clause (4) of the conditions in the Consignment Note, in which it was printed that the company will not be responsible for any loss or damage in transit due to the act of God, unexpected or unavoidable emergencies, Government enemies, commotion including riots, robbery or theft, heat, fire, rain, storm or stress of weather, leakage or any kind of accident whatsoever. Admittedly, the appellant had filed a complaint against its own driver in respect of the goods in question, alleging that the driver had misappropriated the goods. According to the learned Counsel for the appellant, since reliance was placed on the Consignment Note by the respondent No.1 plaintiff, the conditions which are contained in the Consignment Note were binding on the respondent No.1 and that the respondent No.1 is deemed to have agreed to this condition. Admittedly, the Consignment Note was not signed by the respondent. There is no substance in this contention because under the provisions of Section 6 of The Carriers Act, 1865, it is only when the liability is limited by a special contract signed by the owner of the property that certain exceptions would operate. The stipulation referred to by the learned Counsel for the appellant that the carrier was not liable for loss or damage due to theft or robbery would not bind the respondent No.1 who was the owner of the property because admittedly, no special contract signed by the owner came into existence in this case. Therefore, the liability of the carrier even in respect of theft or robbery of the goods would remain, in view of the provisions of Section 6 of the Act. Furthermore, as provided by Section 8 of the said Act, the common carrier would be liable to the owner for loss or damage to the property delivered to the carrier, even when the loss or damage arises from the criminal act of the carrier or any of his agents or servants. Therefore, even if the driver of the appellant had committed theft or robbery, that could be no defence to the appellant. Under Section 9 of the Carriers Act, it was not necessary for the respondent

No.1 to prove that the loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents. In view of this legal position, the contention that the carrier was not liable since the goods did not reach destination because of robbery or theft, cannot be accepted.

It was finally contended by the learned Counsel for the appellant that the plaintiff did not lead detailed evidence as regards the value of the goods to show that the amount of Customs duty of Rs. 4,41,084/was actually paid. On examining the material placed before us by the learned Counsel, we pointed out to him the challan No. 1748 which is at Ex.87, which clearly showed that an amount of Rs. 4,41,084/- was paid by the respondent No.1 towards the Customs duty in respect of the goods in question. The document at Ex. 106 being Bill of Entry for home consumption, clearly supported the case of the respondent plaintiff that the goods in question were imported by him and that the Customs duty was duly paid thereon. Therefore, there is no substance in the contention that the respondent plaintiff did not establish that the Customs duty as claimed was actually paid in respect of the goods in question.

It was tried to be contended on behalf of the appellant that it was not shown by the respondent No.1 that the insurance amount which was actually received did not contain any amount in excess of the amount which the respondent No.1 was actually entitled to on the basis of the valuation of the goods. This contention is purely speculative and deserves no credence.

We find ourselves to be in complete agreement with the reasoning adopted by the trial Court for reaching its conclusions. The appeal is therefore, summarily rejected.

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